

February 15, 2021

Via Email (freedex@ohchr.org)

Ms. Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneve 10, Switzerland

RE: Input for report on disinformation

Dear Special Rapporteur Khan:

The Computer & Communications Industry Association (CCIA)¹ is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. CCIA welcomes this opportunity to provide comments to the UN report on disinformation.²

1. What do you believe are the key challenges raised by disinformation? What measures would you recommend to address them?

It is critical to acknowledge that disinformation is often not illegal per se, so tackling it requires a clear definition. The absence of a multi-jurisdictional definition makes it difficult to address effectively disinformation.

According to the European Commission Communication on tackling online disinformation,³ disinformation is “understood as verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm. Public harm comprises threats to democratic political and policy-making processes as well as public goods such as the protection of EU citizens’ health, the environment or security.”⁴ Disinformation does not include inadvertent errors, satire and parody, or clearly identified partisan news and commentary.

The Council of Europe has defined disinformation as false information that is created with the intention of causing harm to a person, social group or country. This could include imposter, manipulated or fabricated content⁵.

¹ A list of CCIA members is available at <https://www.cciainet.org/members>.

² Available at <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Report-on-disinformation.aspx>.

³ Communication from the Commission to the European Parliament, the Council, the European economic and social committee and the committee of the regions, Tackling online disinformation: a European Approach, COM/2018/236 final, April 2018, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0236>

⁴ Op. cit., p. 3 - p. 4.

⁵ Claire Wardle and Hossein Derakhshan, Information Disorder: Towards an interdisciplinary framework for research and policy making (Council of Europe, 2017), p.5.

CCIA members want to help people better understand the sources of news content so they can make informed decisions about what they're reading. Through these high transparency standards, the readers are made aware of the source and can form their own opinions. For instance, CCIA members may label state-controlled media and independent media differently. CCIA members aim to allow each user to form its own judgments based on a variety of valid and trustworthy content while all users have the opportunity to express themselves online.

CCIA encourages policy action that strengthens the safety of journalists and other media actors. CCIA understands and supports efforts to preserve news diversity and local news producers as these represent an essential part of any democracy. However, CCIA would caution against any favoritism towards national champions or legacy business models. We encourage a broader view of emerging business models and new competition dynamics, which tends to benefit consumers. For instance, publishers, like all companies, should be encouraged to adapt to the digital transformation and the accompanying changing competitive landscape.

It is critical to ensure that the freedom of expression is protected. Addressing disinformation by focusing on removals is not sufficient and could have adverse effects. The solution requires a broad set of tools and activities, ranging from promoting authoritative content, supporting fact-checking efforts, and providing media literacy training to the public.

The decision on what type of content should stay up or be brought down should not be defined by private players, nor political regimes. Policymakers have to be very careful to not place too much power to determine falsehoods in the hands of intermediaries or governments, without adequate and timely oversight processes, particularly by the judiciary.

It is also important to highlight that each online platform is different and each platform thus takes different actions to address disinformation. As a result, reporting on platforms' actions will require a certain level of differentiation, which makes it difficult to develop unified measurements and performance indicators to assess the efficiency of these efforts.

2.

a. What legislative, administrative, policy, regulatory or other measures have Governments taken to counter disinformation online and offline?

Governments are increasingly looking at new ways to combat misinformation. These include: measures to further incentivize digital services to address misinformation on their platforms, targeted sectoral regulations such as those on campaign-related content and defamation rules, and measures to improve literacy including through various verification tools and public education.⁶

Among these approaches, CCIA members have expressed concerns with various targeted measures on social media and other online services that usually require removal of online content

⁶ The U.S. Library of Congress released a report in 2019 extensively documenting the various measures countries have pursued to address misinformation. Library of Congress [U.S.], Government Responses to Disinformation on Social Media Platforms: Comparative Summary [last updated Dec. 30, 2020], <https://www.loc.gov/law/help/social-media-disinformation/compsum.php>.

and other punitive measures. While ostensibly in pursuit of legitimate goals to address misinformation, some of the proposals are expansive in scope and lack adequate safeguards to ensure free expression online. Further, they may also fail to provide requisite clarity for online services to comply.

An especially concerning trend in recent years is authoritarian governments pursuing content regulations to fight “fake news” that have the effect of targeting dissidents and political opposition. Rather than addressing the issue of misinformation online, new rules are targeted to certain online speech that criticizes government action.⁷ For example in March 2019, Russia passed two laws aimed at eliminating “fake news”: the *Federal Law on Amending Article 15-3 of the Federal Law on Information, Information Technologies and Protection of Information* and the *Federal Law on Amending the Code of Administrative Violations*. These rules establish penalties for “knowingly spreading fake news” and establish a framework for Internet Service Providers (ISPs) to block access to websites deemed to be spreading “fake news.”⁸

In addition to government action, there are public-private partnerships that allow for dialogue among government actors and stakeholders for a better understanding of existing measures that digital services are doing to combat the ever changing challenges. For example in Europe, some CCIA members have signed the EU Code of Practice on Disinformation and are publishing yearly assessment reports.⁹ The Code is particularly useful to address disinformation as it creates room for discussions among different parties, notably the EU institutions and digital service providers. Further, work continues through global multi-stakeholder efforts regarding content moderation including disinformation.¹⁰

Civil society groups have recommended that digital literacy tools be built out among the public, providing resources on how online users can identify disinformation online as well as how to report suspicious information.¹¹

b. What has been the impact of such measures on i) disinformation; ii) freedom of opinion and expression; and iii) other human rights?

⁷ Freedom House, Freedom on the Net 2018, <https://freedomhouse.org/report/freedom-net/2018/rise-digital-authoritarianism>.

⁸ See *Russia Criminalizes The Spread Of Online News Which ‘Disrespects’ The Government*, National Public Radio (Mar. 18, 2019), <https://www.npr.org/2019/03/18/704600310/russia-criminalizes-the-spread-of-online-news-which-disrespects-the-government>; Library of Congress Legal Monitor, *Russia: Russian President Signs Anti-fake News Laws* (Apr. 11, 2019), <http://www.loc.gov/law/foreign-news/article/russia-russian-president-signs-anti-fake-news-laws/>.

⁹ European Commission, Code of Practice on Disinformation, available at <https://ec.europa.eu/digital-single-market/en/code-practice-disinformation>. See also, *infra* p. 5.

¹⁰ See, e.g., Internet & Jurisdiction Policy Network: Content & Jurisdiction Program, <https://www.internetjurisdiction.net/work/content-jurisdiction> (program works towards “framing policy problems, sharing knowledge, and designing common policy approaches for cross-border content restrictions.”).

¹¹ Freedom on Net 2020 Recommendations, <https://freedomhouse.org/policy-recommendations/internet-freedom> (“Build digital literacy among the public. Civil society organizations should educate netizens about how to spot disinformation and misinformation on social media, addressing topics such as altered content, so-called deepfake videos, suspicious spelling or phrasing, and inadequate citation. Organizations should also inform internet users about how to report false or suspicious content and how to flag this content for friends and family.”).

CCIA members have observed unintended consequences of some recent measures of new misinformation laws where the legislation does not include adequate safeguards for free expression online. For example, Singapore’s Protection from Online Falsehoods and Manipulation Bill became effective starting on October 2, 2019. The law requires online services to remove content or carry ‘corrections’ on their platforms in response to claims from the government or from individuals that content is false or misleading. However, it places too much power to determine falsehoods in the hands of the government without adequate and timely oversight processes, particularly by the judiciary. Instead of enhancing trust online, these rules could spread more misinformation while restricting platforms’ ability to continue to address misinformation issues. There are also threats to undermine security and privacy.¹²

Further, as documented by civil society, some of the new regulations to address “fake news” have correlated with a rise in digital authoritarianism.¹³

c. What measures have been taken to address any negative impact on human rights?

Any regulatory framework that empowers state authorities to order removal of online speech, especially one with extreme punitive measures, should include robust transparency and oversight safeguards. Further, as governments draft new legislation or other regulatory frameworks, it is important that all relevant stakeholders are given opportunities to provide meaningful input into the legislative process.

3.

a. What policies, procedures or other measures have digital tech companies introduced to address the problem of disinformation?

Digital services work aggressively to respond to and remove harmful content online, including disinformation.¹⁴ Last week, Facebook announced that they have removed more than 12 million pieces of content on Facebook and Instagram containing misinformation about COVID-19 that could lead to imminent physical harm.¹⁵ U.S. law empowers digital services to respond and quickly take down disinformation online and other harmful content,¹⁶ including regarding the

¹² Freedom House, *Freedom on the Net 2020: Singapore Report*, available at <https://freedomhouse.org/country/singapore/freedom-net/2020> (noting that since the law went into effect at least one website remains blocked for failing to comply and observing a “the space for online activism continued to shrink, with police opening investigations against digital campaigners”). See also Rachael Stelly, *Singapore’s Dangerous Response to Combating Misinformation Online*, Project DisCo (Apr. 25, 2019), <https://www.project-disco.org/21st-century-trade/042519-singapores-dangerous-response-combating-misinformation-online/>.

¹³ *Freedom on Net 2018*, *supra* note 7.

¹⁴ Keith Coleman, *Introducing Birdwatch, a community-based approach to misinformation*, Twitter (Jan. 25, 2021), https://blog.twitter.com/en_us/topics/product/2021/introducing-birdwatch-a-community-based-approach-to-misinformation.html; Google, *How Google Fights Disinformation* (Feb. 2019), https://www.blog.google/documents/37/How_Google_Fights_Disinformation.pdf; Facebook, *An Update on Our Work to Keep People Informed and Limit Misinformation About COVID-19* (Dec. 2020), <https://about.fb.com/news/2020/04/covid-19-misinfo-update/>.

¹⁵ Kang-Xing Jin, *Reaching Billions of People With COVID-19 Vaccine Information*, Facebook Newsroom (Feb. 8, 2021), <https://about.fb.com/news/2021/02/reaching-billions-of-people-with-covid-19-vaccine-information/>.

¹⁶ See, e.g., Danielle Abril, *Google Introduces New Tools to Help Journalists Fight Fake News*, Fortune (Mar. 20, 2019), <https://fortune.com/2019/03/20/google-new-tools-fight-fake-news/>; Henry Silverman, *The Next Phase in Fighting Misinformation*, Facebook Newsroom (Apr. 10, 2019), <https://newsroom.fb.com/news/2019/04/tackling->

COVID-19 pandemic and racism and police brutality.¹⁷ Content moderation decisions can be complex but can have a significant impact on the proliferation of misinformation.¹⁸

Given the absence of a multi-jurisdictionally accepted definition of “disinformation”,¹⁹ digital services address these problems under their terms of service including as a breach of their policies or community standards.²⁰ Online businesses have departments that focus on these critical Trust & Safety issues.

b. To what extent do you find these measures to be fair, transparent and effective in protecting human rights, particularly freedom of opinion and expression?

Digital services are committed to protecting human rights, including freedom of expression, online.²¹ Intermediaries’ decisions on content moderation and disinformation must balance these and other key considerations, consistent with their terms of service.

c. What procedures exist to address grievances and provide remedies for users, monitor the action of the companies, and how effective are they?

Businesses rely on customer trust and work to maintain the integrity of their products and services. Many digital services voluntarily provide regular transparency reports.²² Some services have internal procedures for appeal and review of content moderation decisions.²³

more-false-news-more-quickly/; Katharina Borchert, *The Mozilla Information Trust Initiative: Building a movement to fight misinformation online*, The Mozilla Blog (Aug. 8, 2017), <https://blog.mozilla.org/blog/2017/08/08/mozilla-information-trust-initiative-building-movement-fight-misinformation-online/>; Kang-Xing Jin, *Keeping People Safe and Informed About the Coronavirus*, Facebook Blog (June 11, 2020), <https://about.fb.com/news/2020/06/coronavirus/>; Twitter Inc., *Coronavirus: Staying safe and informed on Twitter* (Apr. 3, 2020), https://blog.twitter.com/en_us/topics/company/2020/covid-19.html; Sundar Pichai, *Coronavirus: How we’re helping*, Google Blog (Mar. 6, 2020), <https://www.blog.google/inside-google/company-announcements/coronavirus-covid19-response/>.

¹⁷ Alyza Sebenius & Sarah Frier, *Facebook, Google, Twitter Pledge Vigilance on Disinformation*, Bloomberg (June 18, 2020), <https://www.bloomberg.com/news/articles/2020-06-18/facebook-google-twitter-tell-congress-ready-for-disinformation> (“Google’s YouTube service removed more than 200,000 videos and over 100 million ads to stem disinformation about the coronavirus pandemic and prevent advertisers from profiting. . . . Twitter has tracked the threat of disinformation related to recent protests on racism and police brutality spurred by the death of George Floyd at the hands of police in Minneapolis.”).

¹⁸ Elizabeth Dwoskin & Craig Timberg, *Misinformation dropped dramatically the week after Twitter banned Trump and some allies*, Washington Post (Jan. 16, 2021), <https://www.washingtonpost.com/technology/2021/01/16/misinformation-trump-twitter/> (misinformation about election fraud declined 73% after several social media services suspended Donald Trump’s account).

¹⁹ European Commission Staff Working Document, *Assessment of the Code of Practice on Disinformation - Achievements and areas for further improvement*, 3.2.2 Lack of uniform definitions, <https://ec.europa.eu/digital-single-market/en/news/assessment-code-practice-disinformation-achievements-and-areas-further-improvement>, at 12.

²⁰ See, e.g., Google Transparency Report, YouTube Community Guidelines Enforcement, <https://transparencyreport.google.com/youtube-policy/removals> (last accessed Feb. 3, 2021); Facebook, Community Standards Enforcement Report, <https://transparency.facebook.com/community-standards-enforcement> (last accessed Feb. 3, 2021).

²¹ See, e.g., Miranda Sissons, *An Update on Facebook’s Human Rights Work in Asia and Around the World*, Facebook (May 2020), <https://about.fb.com/news/2020/05/human-rights-work-in-asia/>; Google, Human Rights, <https://about.google/human-rights/>; Twitter, Defending and respecting the rights of people using our service, <https://help.twitter.com/en/rules-and-policies/defending-and-respecting-our-users-voice>.

4. Please share information on measures that you believe have been especially effective to protect the right to freedom of opinion and expression while addressing disinformation on social media platforms.

CCIA members take many different measures to protect the right to freedom of opinion and expression and to prevent and fight the spread of disinformation. These measures, though, are only the tip of the iceberg. Behind them there is a radical shift in the way the digital sector looks at these problems: a new paradigm where there is not a single definitive solution but rather the constant, persevering effort to make meaningful progress to tackle the issues. This effort should be assessed in terms of effectiveness too.

The scale and the scope of the actions needed to protect fundamental rights and address disinformation online are totally unprecedented — and so are the initiatives elaborated to mitigate the potential distortion of digital services and social media. CCIA members have already embraced this new paradigm and continuously invest resources in technology and human review to keep their services trustworthy and safe from rogue players and illegal conduct.

Digital services regularly review their policies and programs to ensure that everyone can stay safe and informed, and express themselves online. Notably, however, digital services are not equipped to adjudicate in real time the locality-specific lawfulness of every piece of information that transits their networks. Rather, these services enforce product governance that prohibits misconduct, or activity that may harm other users, or the public. Thus, when digital services take action against problematic content, they generally do so based on the commitments made in the relevant product’s terms of use, acceptable use policy, or community standards. It is in businesses’ self-interest to remove material from their platforms that poses risks to their users.

Therefore, what is most effective is also a new problem-solving approach: unremitting efforts to deploy, day after day, new innovative instruments and ideas to achieve a tangible progress. For instance,

- In March and April 2019, Facebook took action against over 600,000 ads per month in the EU which violated its policies on low quality or disruptive, misleading or false content. In the third quarter of 2020, Facebook disabled 36.7 million pieces of content which violated their community standards enforcement, of which 98.2% were found and flagged by the platform before users reported them²⁴. Facebook also launched an Ad Library, providing a comprehensive collection of all active ads in Facebook and Instagram and their reach, for example according to users’ age or gender group. Political ads must be identified with a “Paid for by” disclaimer and if users believe they have found an ad that should have such a disclaimer, they are able to report it. Using the information on the Ad Library, Facebook now publishes a report with statistics on ads

²² See, e.g., Google Transparency Report, <https://transparencyreport.google.com/>; YouTube Community Guidelines enforcement, <https://transparencyreport.google.com/youtube-policy/removals>; Facebook, Community Standards Enforcement Report, <https://transparency.facebook.com/community-standards-enforcement>; Twitter Transparency Center, <https://transparency.twitter.com/>.

²³ See, e.g., Facebook’s Oversight Board, <https://oversightboard.com>.

²⁴ Facebook, Community Standards Enforcement Report, <https://transparency.facebook.com/community-standards-enforcement>.

related to social and political issues. To deal with misinformation, Facebook works with fact checkers who apply labels to flag factually incorrect content.

- Similarly, Google has added in-ad “paid for by” disclaimers to political ads and launched an ads library specifically focused on election ads. Between September 2018 and August 2019, Google reported 314,286 actions against EU-based Google Ads accounts for violations of its Google Ads Misrepresentation policy. In the third quarter of 2020, YouTube removed more than 2 million videos and more than 1.5 million channels for violating its spam, misleading content and scams policies²⁵.
- During the EU elections period, Twitter implemented a certification process for political advertisers. The platform also looks at other types of advertising, for instance, obliging business advertisers to create an account that has to meet specific criteria including being the account of someone who represents the brand and product. Similar to Facebook and Google, Twitter also provides a repository of all running ads and past political campaign ads for the EU elections, the Ads Transparency Center.
- Rakuten Viber has partnered with the World Health Organization to offer millions of users in 23 languages verified and reliable information about COVID-19 through interactive chatbots. Its #SocialDistancing sticker packs educate about the virus’s danger. The messaging service is partnering with government health institutions in 16 countries and providing real-time updates and approved information to over 13 million members.²⁶

More recently, the global pandemic has led to the rapid spread of disinformation about COVID-19 across the internet. The tech industry developed several measures such as increasing the visibility of authoritative sources²⁷. Facebook, Google, Microsoft, TikTok and Twitter report monthly to the European Commission on their ongoing efforts²⁸ (see their reports from August 2020²⁹, September 2020³⁰, October 2020³¹, November 2020³² and December 2020³³). Below are some examples of measures taken by CCIA members.

- Since the outbreak Google launched over 200 new products, features and initiatives and is contributing over \$1 billion in resources to help their users, clients, partners, and governments through this unprecedented time. They focus their efforts on providing trusted information to their users, helping people adapt to a changing world, and

²⁵ YouTube Community Guidelines enforcement, <https://transparencyreport.google.com/youtube-policy/removals>.

²⁶ WHO and Rakuten Viber fight COVID-19 misinformation with interactive chatbot (31 Mar. 2020), <https://www.who.int/news-room/feature-stories/detail/who-and-rakuten-viber-fight-COVID-19-misinformation-with-interactive-chatbot>.

²⁷ Oxford Economics, Digital Services in Europe, November 2020, available at:

<https://www.oxfordeconomics.com/recent-releases/Digital-services-in-Europe>, p. 38.

²⁸ European Commission, Tackling coronavirus disinformation, https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/fighting-disinformation/tackling-coronavirus-disinformation_en.

²⁹ EU & COVID-19 Disinformation Reports, August 2020, available at: <https://ec.europa.eu/digital-single-market/en/news/first-baseline-reports-fighting-covid-19-disinformation-monitoring-programme>

³⁰ EU & COVID-19 Disinformation Reports, September 2020, available at: <https://ec.europa.eu/digital-single-market/en/news/second-set-reports-fighting-covid-19-disinformation-monitoring-programme>

³¹ EU & COVID-19 Disinformation Reports, October 2020, available at: <https://ec.europa.eu/digital-single-market/en/news/third-set-reports-fighting-covid-19-disinformation-monitoring-programme>

³² EU & COVID-19 Disinformation Reports, November 2020, available at: <https://ec.europa.eu/digital-single-market/en/news/fourth-set-reports-fighting-covid-19-disinformation-monitoring-programme>

³³ EU & COVID-19 Disinformation Reports, December 2020, available at: <https://ec.europa.eu/digital-single-market/en/news/fifth-set-reports-fighting-covid-19-disinformation-monitoring-programme>

contributing to recovery efforts across the globe. On January 12th, they launched a \$3 million COVID-19 Vaccine Counter-Misinformation Open Fund. This fund will focus on projects that aim to broaden the audience of fact checks, particularly with those who may be disproportionately affected by misinformation in mind³⁴. On YouTube, the update of their policy in October to include vaccines has led to the removal of more than 700,000 videos containing misleading COVID-19 medical information.

- Facebook and Instagram continuously connect people with accurate, reliable and authoritative information. Among others, they launched several initiatives supporting media literacy in Europe, removing false claims about COVID-19 vaccines and supporting their users such as a crisis support over chat to get people in distress real-time help³⁵.

5. Please share information on measures to address disinformation that you believe have aggravated or led to human rights violations, in particular the right to freedom of opinion and expression.

While aiming to tackle hate speech online and disinformation, policymakers have to be very cautious to not create measures pushing for an excessive use of automated filters leading to over-blocking and harming freedom of speech. For instance, France’s Constitutional court declared most of the “Avia Law”³⁶ unconstitutional citing that it “undermines freedom of expression and communication in a way that is not appropriate, necessary and proportionate to the aim pursued”³⁷.

Furthermore, it could disproportionately burden startups that don’t have the needed technical tools and legal expertise, and the expression of the members of the public who rely upon digital services to communicate, work, and study.

6. Please share any suggestions or recommendations you may have for the Special Rapporteur on how to protect and promote the right to freedom of opinion and expression while addressing disinformation.

Given the ease with which erroneous or incomplete information can be confused with willful deception, and the willingness of state actors to label inconvenient but accurate information as disinformation, it is critical that the Special Rapporteur seek consensus among government entities, including regulators, election authorities, as well as political parties, NGOs and other

³⁴ EU & COVID-19 Disinformation Google Report, January 2021, available at: <https://ec.europa.eu/digital-single-market/en/news/latest-set-reports-and-way-forward-fighting-covid-19-disinformation-monitoring-programme>

³⁵ Facebook response to the European Commission Communication on Covid-19 Disinformation, available at: <https://ec.europa.eu/digital-single-market/en/news/latest-set-reports-and-way-forward-fighting-covid-19-disinformation-monitoring-programme>

³⁶ France, Draft bill aiming to combat hate content on the Internet (“Loi visant à lutter contre les contenus haineux sur internet”), May 13, 2020, available at: https://www.assemblee-nationale.fr/dyn/15/textes/l15t0388_texte-adoptee-seance

³⁷ French Constitutional Court, Décision on the bill aiming to combat hate content on the Internet (“Loi visant à lutter contre les contenus haineux sur internet”); decision n° 2020-801 DC, 18 juin 2020, available at: <https://www.conseil-constitutionnel.fr/decision/2020/2020801DC.htm>

civil society, and also digital services and content publishers regarding the scope of what constitutes disinformation.

As noted above, this definition should reflect multiple elements: not only the counterfactual nature, but also the intent of the actor, and the associated harm. An initiative that fails to reflect the multitude of actors that may interact with disinformation, and the multiple elements of what constitutes disinformation, would not be effective.

Reaching consensus on this matter would advance member states' collective understanding of what constitutes disinformation, strengthen online rights, and clarify rules for all players. The technology sector looks forward to working with policymakers and exchanging information on how disinformation can be addressed in the global information ecosystem.

Sincerely,

A handwritten signature in black ink that reads "Matthew Schruers". The signature is written in a cursive style and is contained within a thin black rectangular border.

Matt Schruers
President
Computer & Communications Industry Association